





FY04 Brownfields Funding Workshop

USEPA Region 7

October & November 2003

FY04 Brownfields Funding Workshop

- **Program Overview**
- **The Brownfields Program**
- **Brownfields Liability**
- **Properties Eligible for Funding**
- **FY04 Brownfields Grants
Competition**
- **Preparing a Competitive Proposal**
- **Additional Resources**



Brownfields Revitalization Program Overview

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Are There Brownfields In Your Community?





Why Does EPA Care About Reusing Brownfields?

...because in addition to the economic reuse benefits, redevelopment can also reduce health risks and protect our environment

EPA Brownfields Program

Four Goals:

- Protecting human health and the environment
- Partnering for success
- Strengthening the marketplace
- Sustaining property reuse

Small Business Liability Relief & Brownfields Revitalization Act

The Law promotes brownfields revitalization by:

- Providing funding for assessment and cleanup
- Clarifying Liability
- Building State and Tribal Government response program capacity

Brownfields Grants Funding

Law authorizes up to \$200 million/year
for:

- Assessment,
- Direct cleanup,
- Revolving loan fund
- Job Training

Anticipated Brownfields Funding

\$150 MILLION*
COMMUNITIES
(AUTHORIZED UP
TO \$200M)

\$50 MILLION
**STATES &
TRIBES**
(AUTHORIZED UP
TO \$50M)

***25% For Petroleum**

**ASSESSMENT
GRANTS**

**REVOLVING LOAN
FUND GRANTS**

**DIRECT CLEANUP
GRANTS**

**JOB TRAINING
GRANTS**

**BROWNFIELD
TARGETED
ASSESSMENTS**

**STATE & TRIBAL
RESPONSE
PROGRAM GRANTS**

BROWNFIELDS GRANTS

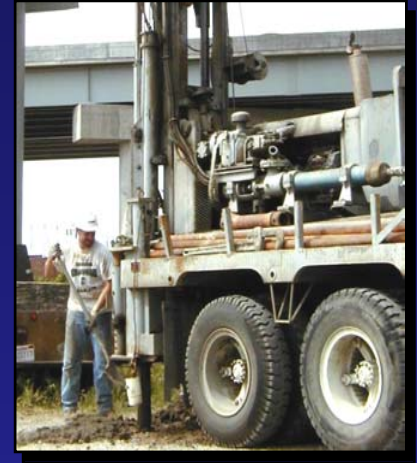
TYPE	WHO	FUNDING	ACTIVITIES
Assessment	States, Tribes, Local Governments, Land Clearance Authorities, Regional Councils, Redevelopment Agencies & Other Quasi – Governmental Entities	\$200,000/contaminated property & \$200,000 for petroleum sites (Up to \$350,000/ Site with Waiver)	Inventory, Characterize, Assess (ASTM standards), & Conduct Planning
Cleanup Revolving Loan Fund (RLF)	Same as Above	\$1,000,000/ Eligible Entity, 20% Cost Share	Loans and Subgrants for Cleanup
Direct Cleanup	Same as Above + Non-Profits	\$200,000/ property, up to 5 properties per year; 20% Cost Share	Cleanup - grant recipient <u>must own property</u>
Job Training	Universities & job training organizations	\$200,000	Environmental Training

Other...

- Additional Uses:
 - Develop & Implement Brownfields Program (Up To 10%)
 - Health Monitoring
 - Monitoring/Enforcing Institutional Controls
 - Insurance
- Prohibited Uses:
 - Administrative Costs
 - Grant & Loan Recipients May Not Be a Superfund Potentially Responsible Party (PRP)

Assessment Grants

- May Be Community/Area-wide or Site-specific
- Examples of Eligible Activities
 - ASTM Phase 1 and 2 Environmental Assessments
 - Area-wide Groundwater Assessments
 - Creation of Brownfields Inventories & GIS Databases
 - Community Notification & public participation
 - Planning activities including preparation of required Quality Assurance documentation



Cleanup Grants

- Require a 20% Match, unless a Hardship Waiver is approved
- Must Own Property
- Examples of Eligible Activities
 - Preparation of alternative analysis & state required reports
 - Community Notification & public participation
 - Environmental Insurance
 - Cleanup activities including soil capping, excavation, disposal, contaminant extraction, etc.
 - Institutional controls e.g. deed notices, zoning

What Contaminants May Be Assessed and Cleaned Up?

- ✓ Hazardous Substances
- ✓ Contaminants
- ✓ Pollutants
- ✓ Petroleum Products
- ✓ Controlled Substances
- ✓ Mine-Scarred Lands



Revolving Loan Fund (RLF) Grants

- Require a 20% Match, unless a Hardship Waiver is approved
- At least 60% of funds must be used to capitalize cleanup loans
- Up to 40% of funds may be used for Cleanup Subgrants
 - RLF Subgrant Recipients Must Own the Property
- Examples of Eligible Activities
 - Management of loan program
 - Preparation of alternative analysis & state required reports
 - Community Notification & public participation
 - Environmental Insurance
 - Cleanup activities including soil capping, excavation, disposal, contaminant extraction, etc.
 - Institutional controls e.g. deed notices, zoning

Specific Cleanup Requirements (Cleanup & RLF Grants)

- Must be protective of human health & the environment & comply with applicable State/Federal Laws
- A Qualified Environmental Professional must manager/oversee cleanup – completion must be verified and certified
- Subject to cost&time limitations

Common Requirements (Assessment & Cleanup)

- Quality Assurance
- EPA Consultation/Approval to ensure that the sites & planned activities are eligible & allowable
- Community Notification & public participation
- Compliance with Federal grants
- Administration requirements (e.g. Davis Bacon Act, MBE/WBE, Reporting)
- Good fiscal & grants management

Job Training Grants



- Separate Competition
- Associated with an existing Brownfields grant community
- Provide training to participants impacted by Brownfields properties
- Innovative technologies encouraged
- Examples of Eligible Activities
 - Training in assessment & cleanup of hazardous substances, contaminants, pollutants, petroleum products, controlled substances & mine-scarred land waste
 - Community Notification and outreach

Brownfields Targeted Assessments

- Environmental Assessments
 - ASTM Phase 1&2
- Conducted by State, Tribe or EPA



State and Tribal Response Programs

The Brownfields Law authorizes \$50 million for States and Tribes

Funds can be used to:

- Establish or enhance response programs
- Capitalize revolving loan funds
- Develop insurance mechanisms
- Conduct targeted Brownfields assessments & other site-specific
- Develop & monitor institutional controls



Brownfields Definitions: Are Your Properties Eligible for Funding?

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What is a Brownfields Site?

- Brownfields Definition (CERCLA 101(39)):
“...Real Property, the Expansion, Redevelopment, or Reuse of Which May Be Complicated by the Presence or Potential Presence of a Hazardous Substance, Pollutant, or Contaminant.”
- Residential, Commercial & Industrial Properties
- Presence or potential presence of indoor and outdoor contaminants at brownfields properties

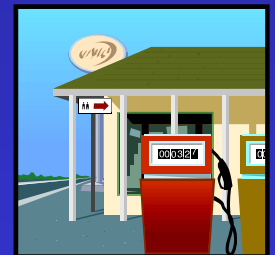
Brownfields Grant Eligibility

Eligible Entities:

- State, Tribal and local governments
- Quasi-government entities (e.g., regional councils and redevelopment authorities)
- Non-profits for direct cleanup grants
- Private parties eligible for loans from revolving loan funds granted to government entities

Brownfields Site (Property)

- Definition Also Specifically Includes:
 - “Mine-scarred” Land (e.g. abandoned waste rock/ spent ore piles)
 - Controlled Substances (e.g. illegal drug labs)
 - Petroleum (e.g. abandoned gas stations)
 - Relatively low risk
 - Recipient & past owner are not the polluter
 - No Liable & Viable Responsible Party



Properties Not Eligible For Brownfields Funding




- ✓ Listed or Proposed for Listing on the National Priorities List (NPL);
- ✓ Subject to CERCLA Orders or Consent Decrees; or,
- ✓ Federal Properties (Except Land Held in Trust for an Indian Tribe)

Sites Requiring a Property-specific Determination

- **Sites NOT Eligible for Funding Without a Property-Specific Determination***
 - ✓ Planned/Ongoing Superfund Removal Actions
 - ✓ Toxic Substance Control Act (TSCA) PCB Cleanup Through EPA Enforcement Action
 - ✓ Federal Actions or Judicial Decrees under RCRA, OPA, TSCA or SDWA
 - ✓ Land Disposal Units That Have Filed a Closure Notification Under Subtitle C of RCRA
 - ✓ Monies from the LUST Trust Fund have been spent at the site

** Applicant Must Show that Brownfields Funding Will*

- *Ensure Protection of Human Health and the Environment*
- *Promote Economic Development or Enable the Creation, Preservation Of or Addition To Parks, Greenways, Undeveloped Property, Other Recreational Property, or Other Property Used for Non-profit Purposes*

The logo is a circular emblem. It features a central map of the United States with the state of Missouri highlighted. Surrounding the map are four arrows forming a circular path. The text "REGION 7" is at the top, "BROWNFIELD" is on the right, "REUSE" is at the bottom left, and "REVITALIZE" is at the bottom right. The text "EPA" is on the left. The entire logo is in a light gray color.

Superfund and Liability Relief Under the Brownfields Law

Basic Superfund Liability

- **Joint, Several, Strict, and Retroactive Liability**
 - Joint and Several -- 100% share if others not found -- “in for a penny, in for a pound”
 - Strict -- no proof of negligence and no proof of intent is required
 - Retroactive -- pre-1980 releases covered
- **Owners, Operators, Generators, and Transporters are potentially liable**

Basic Superfund Liability (cont.)

- Owners who buy properties *after* releases occur can be liable
- Land transaction puts new owner in privity of contract with party causing the problem
 - **Exemption for government entity that acquires by escheat or involuntary transfer or “through the exercise of eminent domain authority by purchase or condemnation”**

Brownfields law structure

- Title I
 - Small Business Liability Relief
- Title II, Subtitle A
 - Competitive Grants
- Title II, Subtitle B
 - Liability Clarifications
- Title II, Subtitle C
 - State Response Programs

Title II, Subtitle B

Liability Clarifications

- **Defines “All Appropriate Inquiry”**
- **Describes Three Landowner Provisions:**
 - **Innocent Landowner**
 - **Contiguous Properties**
 - **Bona Fide Prospective Purchaser**
- **Creates Windfall Lien**

“All Appropriate Inquiry”



- Defines due diligence standard for innocent landowner defense, contiguous properties, bona fide prospective purchaser
- Statutory ASTM Phase 1 Environmental Assessment (E1527-97)
 - May 9, 2003, EPA’s final rule recognizes ASTM 2000 standard (E1527-00)
 - EPA required to promulgate new standard by 1/11/04

Innocent Landowner

- **Exempts contaminated property owner who did not cause or know of contamination at time of purchase**
- **Must Conduct an “All Appropriate Inquiry” prior to purchase, and not find contamination**
- **Must exercise appropriate care & comply with continuing obligations including, cooperate with EPA**

Contiguous Properties

- Exempts nearby landowner who did not cause contamination
- Must have had “All Appropriate Inquiry” prior to purchase, and not find contamination
 - Can convert to bona fide prospective purchaser if contamination found after 1/11/02
- Must exercise appropriate care & comply with continuing obligations including, cooperate with EPA

Bona Fide Prospective Purchaser

- Requires “All Appropriate Inquiry” prior to purchase for properties purchased after Jan. 11, 2003
- Can avoid liability even if contamination is found
- Must exercise appropriate care with respect to release, cooperate with EPA
- U.S. windfall lien for response costs, limited to increase in value
 - No windfall lien for Brownfields grants

EPA's “Common Elements” guidance, March 6, 2003, describes what is needed to qualify for the new law's “three landowner provisions”

- **Innocent Landowner defense**
- **Contiguous Property exemption**
- **Bona Fide Prospective Purchaser**

The “common elements” of the three landowner provisions are divided into:

- Two “threshold criteria”, and
- Five “continuing obligations”

Two threshold criteria

- **All appropriate inquiry**
 - Currently defined as ASTM 2000 Phase 1
 - Good practice would also conduct Phase 2
- **(No) Affiliation**
 - Party cannot be potentially liable or affiliated with potential liable party

Five continuing obligations

- **Land Use Restrictions and Institutional Controls**
 - Deed notices, zoning, etc.
- **Reasonable steps**
 - Stop or limit exposure to releases
- **Cooperation, Assistance, and Access**
- **Compliance with information requests and administrative subpoenas**
- **Providing legally required notices**

Title II, Subtitle B

State Response Programs

- **Party enrolls in State VCP program and agrees to perform cleanup**
 - Excludes high risk sites
- **EPA will not take an enforcement action**
 - Statutory “enforcement bar” for CERCLA
 - Exception for Imminent and Substantial Endangerment
 - EPA/State Memorandum of Agreements acknowledge VCP programs

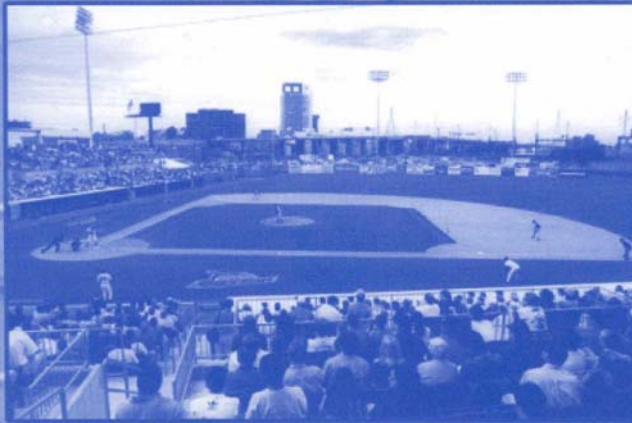
Wrap-up for Liability Relief under the Brownfields law

- **Superfund casts a wide net over owners, operators, transporters, generators**
- **Bona Fide Prospective Purchasers can acquire contaminated property without Superfund liability**
- **BFPPS must comply with the “Common Elements” threshold criteria and continuing obligations**
- **Sites can be cleaned up under State voluntary cleanup programs**





Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants



FY04 Grants Competition

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Planning Nuts & Bolts

- **Focus On Target Areas – Master Plans, Economic Zones, Main Street Programs**
- **Engage Your Community Early & Often**
- **Consider Your Project “Cradle to Grave”**
- **Identify Key Partners and Resources**
- **Investigate Site Ownership, Access and Eligibility Issues Early**
- **Regional Approaches – Consider How Your Plan Fits With Your Surrounding Area (Coalitions/Planning Councils May Apply)**

Grants Competition (Cont.)

FY04 SCHEDULE

- | | |
|---|-----------------------|
| 1. Grant Application Guidelines Available | NOW ONLINE |
| 2. FINAL Proposals Due | Dec. 04, 2003 |
| 3. EPA Evaluates Proposals | Dec. 2003 – Mar. 2004 |
| 4. Results Announced | May 2004 |
| 5. New Grants Awarded | Sep 2004 |
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Other Resource/Partnership Possibilities



- State Environmental, Economic & Transportation Programs
- Other Federal Agencies – HUD, EDA, USACE, USDA
- Private Foundations – Trust for Public Lands, NALGEP, NE-MW Institute etc.

Region 7's Brownfields Program

- Brownfields: Susan Klein 913-551-7786
Coordinator klein.susan@epa.gov
- Job Training: Nancy Schelle (913) 551-7940
schelle.nancy@epa.gov
- Visit our webpage:
<http://www.epa.gov/region07/> to learn more about
Region 7's Brownfields program.

